In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-820

UNITED STATES OF AMERICA, PETITIONER

v.

PASCUAL GUANA-SANCHEZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE WRIT ON ACCOUNT OF MOOTNESS

The United States submits this memorandum in response to respondent's motion to dismiss the writ on account of mootness.

The question presented in this case is whether respondent has standing to suppress statements and future testimony of three witnesses on the ground that the witnesses were unlawfully arrested while passengers in his automobile.

Respondent's claim of mootness is based upon the suppositions that all three witnesses "have been allowed by the government to melt back into the populace of Mexico," and that their present whereabouts are unknown to the government (Motion p. 6), from which suppositions respondent concludes that the question presented

is merely hypothetical and moot because the government will not be using the statements or testimony of any of the witnesses at respondent's trial.[1]

We have recently been informed by the Immigration and Naturalization Service, however, that one of the witnesses is presently living and working in this country at a location known to the Service. The validity of the suppression of his testimony is unquestionably a live issue. The other two witnesses have returned to Mexico but their locations too are known to the Service. There is no reason to believe that these witnesses will refuse to return to the United States for the purpose of testifying at respondent's trial, if such testimony is required.[2] Accordingly, this case is clearly not moot.

For these reasons petitioner submits that respondent's motion to dismiss or remand should be denied.

ROBERT H. BORK,
Solicitor General.

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[1]Respondent's assertions concerning the district court's denials of his motion to dismiss on speedy trial grounds and of his other motions have no bearing on the question of mootness. The government still intends to prosecute respondent if the judgment of the court of appeals is reversed, and we would oppose his speedy trial motion. The question whether the indictment should be dismissed on speedy trial grounds is, of course, not before the Court, and can be decided after this Court's disposition of the case, in light of such facts as may be shown concerning the relevant criteria.

[2]If it should develop that those witnesses are unavailable at trial, there may then be an issue regarding the propriety of proceeding with the trial. The record presently does not permit a determination of the facts that may be relevant to the disposition of this issue, if it arises, nor is it clear that the Seventh Circuit would follow the decision of the Ninth Circuit in *United States v. Mendez-Rodriguez*, 450 F. 2d 1, should that decision be applicable to the facts of this case. All of this, of course, is entirely speculative; it provides no basis for concluding that the case now before this Court is moot.